

Total Coliform Rule / Distribution System Advisory Committee
PROTOCOLS

1. PURPOSE AND SCOPE

Under the Six-Year Review provisions of the 1996 Amendments to the Safe Drinking Water Act, EPA is revising the TCR and considering distribution system issues to ensure the integrity of water quality in the distribution system. The Agency made the decision to revise the TCR and consider other distribution system issues in the Six-Year Review determination published in July, 2003.

The charge to the Total Coliform Rule/Distribution System (TCRDS) Advisory Committee is to develop an agreement-in-principle regarding recommendations to EPA on revisions to the Total Coliform Rule (TCR) and on what information about distribution systems is needed to better understand and address possible public health impacts from potential degradation of drinking water quality in distribution systems.

The major objectives will be to provide advice on and recommendations on:

- a. Revisions to the Total Coliform Rule to improve implementation while maintaining or improving public health protection and distribution system water quality. The issues that the TCRDS Advisory Committee may consider include but are not limited to: TCR monitoring framework, sanitary survey provisions, definition of MCL violations and potential follow-up corrective actions, and communication of public health significance of violations.
- b. What data should be collected, research conducted, and/or risk management strategies evaluated to better inform distribution system contaminant occurrence and associated public health risks in the distribution systems. This is intended to “initiate a process for addressing cross connection control and backflow prevention requirements and consider additional distribution system requirements related to significant health risks” called for by the Microbial Disinfection Byproducts Federal Advisory Committee. The issues that the TCRDS Advisory Committee may consider include but are not limited to: (1) evaluation of available data and research on aspects of distribution systems that may create risks to public health, (2) identification of priority data gaps, and (3) identification of data collection approaches (such as a data collection rule and/or additional research).

2. PARTICIPATION

- a. Representation. The Advisory Committee is comprised of individuals selected by the U.S. Environmental Protection Agency to represent organizations based on the diverse expertise and experience needed to provide balanced advice to EPA on issues related to the Total Coliform Rule and the distribution system issues encompassed by the charge.

- b. Members. Each participating organization may designate a Committee Member and an Alternate, subject to approval by EPA. See attached list.
- c. Chair. The Director of EPA's Office of Groundwater and Drinking Water serves as Chair of the Committee. The function of the Chair is to open and close meetings and review and certify meeting summaries, in consultation with the Advisory Committee.
- d. Attendance. Each Committee Member is expected to make a good faith effort to participate in all meetings or conference calls. Only the designated alternate may participate in Committee meetings on behalf of the organization being represented in the Member's absence. Each Member may be accompanied by such other individuals as that Member believes is appropriate to represent his/her interest.
- e. Constituent Interests. Committee Members are expected to keep their Alternates and their constituencies informed about the issues and options under discussion and to represent the concerns and interests of the organization they were appointed to represent. Members and Alternates will make a good faith effort to ensure that all significant information and the issues and interests of concern to that constituency are fully and clearly articulated in a timely manner to the full Advisory Committee, so that they can be considered in the effort to reach mutually acceptable agreements.

3. **AGREEMENT**

- a. Products. The intended products of the Committee are as described in the purpose and scope above. The Committee anticipates that these will be appendices to a cover document signed by all Committee Members on behalf of their organizations describing the Committee's understandings as to what members' support for the agreement in principle means and any agreed-upon follow up actions, assignments and expected milestones.
- b. Support for the Agreement. All organizations represented on the Advisory Committee agree that, once the Advisory Committee's final consensus-based work product is signed, the organizations will honor that agreement by taking positions in other forums that are consistent with the agreement. EPA, as a member of the Committee, agrees to use the agreement in principle as the basis of a Notice of Proposed Rulemaking to the maximum extent possible consistent with the Agency's legal obligations.
- c. Final Rule. So long as it is consistent with federal law, EPA also intends to promulgate final rules consistent with the Committee's written agreement unless new information or comments submitted in response to the Notice of Proposed Rulemaking require changes in the proposal.

- d. If new information or other requirements lead EPA to issue a Notice of Proposed Rulemaking or to take other action that significantly diverges from the agreement in principle or requires changes in the proposed rule, EPA intends to communicate and discuss the evolution of thinking about regulatory provisions with Advisory Committee members and the interested public, in some manner as appropriate. In the event that EPA makes a significant change, others also will be free to revise their positions.

4. DECISION MAKING

- a. Consensus. The Committee will operate by consensus of Committee Members (or alternates) present, to the extent possible. Consensus is defined as each Member “can live with” a decision, taken as a whole, being considered by the Committee. Advisory Committee decisions will be made based on the concurrence of all Members present at a given meeting, except for agreement on any final products delivered to EPA, which will require consensus of all Members.

If consensus cannot be reached on the final product, a report will be drafted by Committee Members assisted by the facilitator and submitted to EPA, presenting areas of agreement and the range of views expressed where agreement was not reached, along with a discussion of members’ views about the potential pros and cons associated with the various alternative approaches.

- b. Agreement and Product(s). Agreement of the Advisory Committee on any written document or other product(s) of the Advisory Committee intended for delivery to EPA will be considered products of the Advisory Committee. Pre-consensus draft materials are not considered nor should be characterized as products of the Advisory Committee.

5. PROCEDURES

- a. FACA. The Advisory Committee is established by EPA under, and complying with, the requirements of the Federal Advisory Committee Act (FACA).
- b. Notice of Open Meetings. Consistent with FACA requirements, meetings of the Advisory Committee will be announced in the *Federal Register* prior to each meeting (at least 15 days) and will be open to the public. Conference calls and working group meetings may be considered a meeting of the Committee if more than a majority of Committee Members participates. Web sites, data bases, and informational materials to which

more than half of the Committee Members have access also will be available to the public.

- c. Meeting Summaries. Narrative summaries of the Advisory Committee meetings will be developed by the facilitator for approval by the Advisory Committee. Summaries will consist of key points raised, options under consideration, agreements reached, and action items. Technical presentations will be attached but not summarized. There will be no attribution of comments to individuals or groups. The proceedings will not be electronically recorded. Meeting summaries will be made available to the public following approval of drafts by Committee Members on the EPA web site (www.epa.gov).
- d. Agendas. Preliminary meeting agendas will be drafted by the facilitator in consultation with the Advisory Committee members and will be distributed in advance of each meeting. Agendas will be reviewed at the beginning of each meeting and will be refined, if necessary, and approved by the Committee and by the Designated Federal Official in compliance with FACA. Members will be consulted at the end of each meeting about topics for future agendas.
- e. Caucus. Any Member may confer privately with members of their constituency or with a subset of other Members during or after an Advisory Committee meeting as needed, as long as fewer than half of the Committee members are present. The facilitator will determine the timing of caucuses during meetings, in consultation with the Member making the request and considering the impact on the deliberations of the Committee as a whole. The facilitator also may confer privately with Committee Members during or after meetings.
- f. Observers. Advisory Committee meetings are open to the public. Observers are any non-Advisory Committee member attendees at meetings. Only the Advisory Committee members (or their designated Alternate) will be seated at the table. Members may ask that the facilitator call on an observer for particular points of clarification.
- g. Public Comment. Meeting agendas will set aside time for the specific purpose of taking public comment. Observers will be asked to indicate their interest in making public comment ahead of time on a sign-up sheet provided at each meeting for this purpose. The Advisory Committee may ask EPA, to the extent funds are available, to convene public meetings or use other mechanisms as appropriate to elicit additional input from other interested parties to ensure that the Committee's work products are as responsive as possible to affected parties' needs.

- h. Electronic Communication. Electronic communication mechanisms will be utilized for the sharing of information outside of Advisory Committee meetings, including distribution of meeting agendas and summaries. For any Committee Member who is unable to participate in electronic communication, other means of communication will be utilized (fax and hard copy mail). Those receiving electronic communications or hard copy versions of those communications, where the documents are noted as confidential, agree not to circulate those documents to any other person without the express consent of the individual from whom the document originally was sent. Committee members are advised that emails to more than half of the members of the Committee should be used principally for administrative communications, such as scheduling or circulation informational materials, to ensure that substantive dialogue occurs during public forums. Similarly, emails that include an EPA employee in the distribution list may be subject to the Freedom of Information Act.
- i. Working Groups. The Advisory Committee may establish working groups to assist it in carrying out its mission. Working groups may consist both of individuals who are members of the Advisory Committee and individuals who are not. Working groups have no decision making authority on behalf of the Advisory Committee. Working groups are intended to work in a collaborative manner to support the work of the Advisory Committee and should strive to operate by consensus in generating recommendations or advice to the full Advisory Committee. In the event consensus can not be reached in a timely manner, the working group may produce a shared report outlining areas of agreement and disagreement and the reasons for differences.

All Advisory Committee members and Alternates will be notified of working group meetings and conference call dates and times. Working group meetings are open to observers, provided that the number of observers does not interfere with the work of the group. Participation in working group conference calls may be limited at the discretion of the facilitator.

6. SAFEGUARDS FOR THE PARTIES

- a. Good Faith. All participants agree to operate in good faith in all aspects of the Advisory Committee deliberations. Good faith is understood to be Members' commitment to articulating interests and concerns fully and in a timely manner with the intent to reach agreement in this forum on the full scope of issues under consideration within the agreed upon charge before pursuing other alternatives. Members and Alternates agree to communicate their views honestly and not to withhold salient information. Members in particular will inform others in a timely manner when they are aware that there is a substantial likelihood that their organization will not

be able to support specific options. Members and Alternates also agree not to represent their personal or organizational views as those of the Advisory Committee, and that they express consistent views and opinions in this and in other forums, including in press contacts.

- b. Right to Withdraw. Any party may withdraw from the Advisory Committee at any time. However, prior to withdrawing, the Member will communicate the reasons for withdrawal (in person if practical). EPA will determine how to proceed in light of the withdrawal after discussions with the Committee on the impact of the withdrawal to the Committee's ability to function and meet its charge.
- c. Others' Positions. To encourage a free and open exchange, Members and Alternates agree not to characterize the position of any other party in public statements or in discussions with the media, even if that party withdraws from the Advisory Committee. To the extent feasible, Members and Alternates will refer others to approved meeting summaries for information about the Advisory Committee's discussions. Specifically, Members and Alternates also agree not to use specific offers, positions or statements made by another member during non-public discussions for any other purpose not previously agreed to in writing by the members involved. The Advisory Committee requests that other attendees at Advisory Committee meetings also voluntarily comply with this provision.
- d. Interactions with the Press. Recognizing that the way in which Advisory Committee discussions or the statements or positions of Advisory Committee members are publicly characterized may affect the optimal functioning of the Advisory Committee, wherever possible Advisory Committee members (and their alternates) will refer inquiries from the press regarding the overall process of the Advisory Committee and its deliberations to approved meeting summaries. If an Advisory Committee member does engage in discussion with the press, they will refrain from characterizing the views of, or attributing comments to, other Advisory Committee members.

7. SUPPORT FOR THE ADVISORY COMMITTEE

- a. Facilitator. A neutral facilitator will facilitate the Advisory Committee meetings and work with Committee Members to ensure that the process runs smoothly. The facilitator serves at the will of the Advisory Committee and EPA. The role of the facilitator typically includes: developing draft agendas, focusing meeting discussions, working to resolve any impasses that may arise, preparing meeting summaries, working with Committee Members to support between-meeting activities,

working with the EPA staff in locating and circulating background materials, and other appropriate functions. The facilitator will take no positions on the issues before the Committee.

- b. Technical Support. A Technical Work Group will be established to provide information and analyses to the Advisory Committee. The composition of the Technical Work Group members will reflect the range of interests that make up the Advisory Committee to ensure its credibility and broad acceptance for its work products. The Technical Work Group is intended to work collaboratively, to serve the needs of the Advisory Committee as a whole, and to foster shared understanding, rather than to advocate any specific proposal. One or more technical consultants will partner with the facilitator in planning and conducting the Technical Work Group's activities and in making presentations on behalf of the Technical Work Group to the Advisory Committee.

8. SCHEDULE

The charter for the TCRDS Advisory Committee expires in July 2009. Currently, the Committee has plans to meet about 10 times between July 2007 and the summer or fall of 2008. Meetings are expected to be in Washington, DC.

9. CHANGES

These Protocols were prepared by the facilitator and approved by consensus of the Committee for the purpose of making Committee operations transparent and mutually understood. The provisions of these protocols which are not subject to requirements delineated in the Federal Advisory Committee Act or its regulations or the Committee Charter may be revised with the consensus of the Advisory Committee and with approval by the EPA's Designated Federal Officer.

NOTE: This document was prepared by the facilitators for consideration by the Total Coliform Rule Distribution System Advisory Committee and does not constitute a product of the Committee. The Total Coliform Rule Distribution System Advisory Committee is a federal advisory committee chartered by Congress, operating under the Federal Advisory Committee Act (FACA; 5 U.S.C., App.2). The Committee provides advice to the Administrator of the U.S. Environmental Protection Agency on revisions to the Total Coliform Rule (TCR), and on what information about distribution systems is needed to better understand the public health impact from the degradation of drinking water quality in distribution systems. The findings and recommendations of the Committee do not represent the views of the Agency, and this document does not represent information approved or disseminated by EPA.